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The Honorable Brian A. Tsuchida

MAR 20 2015

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL SMITH JR.,

Defendant.

CASE NO.

MA15-115

COMPLAINT for VIOLATION

Title 18, United States Code, Section 2250

BEFORE the Honorable Brian A. Tsuchida, United States Magistrate Judge, U.S.
Courthouse, SEATTLE, Washington.

COUNT ONE

(Failure to Register or Update Sex Offender Registration)

During October 2014 and continuing until the present, in Skagit County and within the boundaries of the Swinomish Indian Reservation, in the Western District of Washington, MICHAEL SMITH JR., an individual required to register and update his registration pursuant to the Sex Offender Registration and Notification Act, and a sex offender by reason of a conviction under Swinomish Tribal Code for Abusive Sexual Touching, in violation of Swinomish Tribal Code 4-03.020, did knowingly fail to update his sex offender registration.

All in violation of Title 18, United States Code, Section 2250.

1 The undersigned complainant, Brian Allan, being duly sworn, states:

2 1. I am a Senior Inspector for the United States Marshals Service assigned to the
3 Seattle, Washington, office. I have been with the United States Marshals Service for over
4 thirteen years. I graduated from the United States Marshals Service Academy and the
5 Federal Law Enforcement Training Center for Criminal Investigators. I am currently
6 assigned as the Sex Offender Investigations Coordinator for the United States Marshals
7 Service, Western District of Washington. One of my responsibilities is to investigate
8 crimes involving individuals who are convicted sex offenders who have failed to register
9 as required by the Sex Offender Registration and Notification Act ("SORNA") (codified
10 at Title 42, United States Code, Section 16901, *et seq.*), enacted on July 27, 2006, as part
11 of the Adam Walsh Child Protection Act of 2006.

12 2. This affidavit is made in support of a criminal complaint charging the
13 defendant, MICHAEL SMITH JR, with failure to update his sex offender registration, in
14 violation of Title 18, United States Code, Section 2250. The information set forth below
15 has come from either personal investigation or has been related to me personally by other
16 law enforcement officers associated with this investigation.

17 **I. SUMMARY OF INVESTIGATION**

18 3. As set forth below, MICHAEL SMITH JR is a sex offender who was
19 convicted under the Swinomish Tribal Code, and is required by federal law to register in
20 any jurisdiction in which he resides, maintains employment, or attends school. SMITH
21 last registered as a sex offender with the Skagit County Sheriff's Office on October 18,
22 2014, changing his address from 17619 1st Street, Apartment C, La Conner, Washington,
23 to 17552 Front Street, La Conner, Washington, both within the boundaries of the
24 Swinomish Indian Reservation.

25 **II. DEFENDANT'S SEX OFFENDER STATUS**

26 4. On or about December 19, 2001, MICHAEL SMITH JR. was convicted of
27 Abusive Sexual Touching in violation of the Swinomish Tribal Code 4-03.020.
28 MICHAEL SMITH JR. was sentenced to 365 days confinement for this offense, with the

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1 entire sentence suspended if he complied with certain special conditions. As a result of
2 this conviction, MICHAEL SMITH JR. is required to register as a sex offender under
3 Federal law.

4 5. The elements of the crime of Abusive Sexual Touching under Swinomish
5 Tribal Code 4-03.020 are:

6 (A) Any person who knowingly engages in, causes or attempts sexual
7 touching, as defined in Section 4-01.040, with or by another person in any one of the
8 following circumstances commits the crime of abusive sexual touching:

9 (1) by using force against the other person;

10 (2) by threatening or placing the other person in fear;

11 (3) when the other person is rendered unconscious or physically or
12 mentally incapable of declining participation or communicating
13 willingness to engage in sexual intercourse for any reason including
14 physical handicap, mental disease, mental disability, alcohol or drug
15 intoxication;

16 (4) when the defendant is in a position of trust or authority with
17 respect to the other person, and takes advantage of that position to
18 cause sexual touching; or

19 (5) when the defendant is related to the victim as an ancestor,
20 descendent, or sibling.

21 6. Sexual touching is defined in the Swinomish Tribal Code as: "any touching
22 of the sexual or other intimate parts of a person done for the purpose of arousing or
23 gratifying the sexual desire of any person or for the purpose of abusing, humiliating,
24 harassing, or degrading another person."

25 7. The SORNA requires that all convicted "sex offender[s]" must "register,
26 and keep the registration current, in each jurisdiction where the offender resides, where
27 the offender is an employee, and where the offender is a student." 42 U.S.C. § 16913(a).
28 A sex offender keeps their registration current by, not later than three business days after

1 each change of name, residence, employment, or student status, appearing in person in at
2 least one jurisdiction and informing that jurisdiction of all changes in the information
3 required for that offender in the sex offender registry. 42 U.S.C. § 16913(c). The term
4 “sex offender” is defined to mean an individual who has been convicted of a “sex
5 offense.” 42 U.S.C. § 16911(1). The statute defines a “sex offense” to include a
6 “criminal offense that has an element involving a sexual act or sexual contact with
7 another,” including an attempt to do so. *Id.* § 16911(5)(A)(i), (v).

8 8. SMITH’s offense, Abusive Sexual Touching, has an element that involves
9 sexual contact with another. Accordingly, SMITH is a “sex offender” under SORNA,
10 and thus is required to register and keep his registration current under SORNA. SMITH
11 is classified as a Tier II sex offender with a duty to register for 25 years because the
12 offense of Abusive Sexual Touching, under the Swinomish Tribal Code, is comparable to
13 or more severe than Abusive Sexual Contact as described in 18 U.S.C. § 2244.

14 III. DEFENDANT’S KNOWLEDGE

15 9. I have reviewed documents provided to me the Swinomish Tribal Court and
16 the Skagit County Sheriff’s Office that show MICHAEL SMITH JR. knew of his
17 requirements to register as a sex offender and to update his registration. These
18 documents include a document entitled, Notice of Intent and Order, from the Swinomish
19 Tribal Court, which states,

20 “YOU ARE HEREBY NOTIFIED that by order of the Court dated October
21 22, 2002 you are required to immediately register with Washington State as a
22 sexual offender. Be informed that initial contact for registration with the State of
23 Washington must occur no later than 72 hours after your release from custody and
24 you are hereby given notice of the Court’s intent to consider any failure to meet
25 this obligation a violation of the Court’s order.

26 Your failure to fully comply with the prior orders of this court may be
27 considered criminal contempt of court that can be separately charged and subject
28 you to arrest. DATED THIS 15th day of April, 2004.”

1 10. Following this order, MICHAEL SMITH JR. registered with the Skagit
2 County Sheriff's Office on April 21, 2004, and acknowledged his duty to register by
3 signing the Sex and Kidnapping Offender Registration Requirements form. This
4 document states: "If an offender moves within the same county, he or she must send
5 written notice of the change of address to the county sheriff within 72 hours of moving."

6 11. On October 18, 2014, SMITH signed an updated version of the Sex and
7 Kidnapping Offender Registration Requirements which states, "If a person required to
8 register changes his or her residence address within the same county, the person must
9 provide, by certified mail, with return receipt requested, or in person, signed written
10 notice of the change of address to the county sheriff within 3 business days of moving."

11 **IV. EVIDENCE OF DEFENDANT'S FAILURE TO UPDATE**

12 12. On September 16, 2014, a criminal complaint was prepared for the
13 Swinomish Tribal Court, alleging that MICHAEL SMITH JR. had committed the crime
14 of Failure to Register as a Sex Offender. According to the complaint, on or about
15 August 10, 2014, Swinomish Tribal law enforcement learned that SMITH was no longer
16 residing at the previous registered address of 17541 2nd Street, La Conner, Washington,
17 and did not notify Tribal law enforcement of a new address as required by the Swinomish
18 Tribal Code 4A-02.060. The 2nd Street address is on the Swinomish Indian Reservation,
19 which requires SMITH to notify the Swinomish Police Department within three days of
20 leaving that address.

21 13. On October 18, 2014, SMITH registered an address of 17552 Front Street,
22 La Conner, Washington, which is within the exterior boundaries of the Swinomish Indian
23 Reservation, with the Skagit County Sheriff's Office. However, he did not update his
24 registration with the Swinomish Police Department.

25 14. On March 2, 2015, an arrest warrant was issued in the Swinomish Tribal
26 Court for Failure to Register as a Sex Offender. On March 11, 2015, the Swinomish
27 Police Department went to 17552 Front Street, La Conner, Washington, and interviewed
28 SMITH's father, Michael Smith SR. Michael Smith SR has medical issues which


1 prevented him from writing out a statement but a Swinomish police officer wrote Smith
2 SR's statement which he signed. The statement read, "Michael Smith JR. has not lived
3 here for a long time." On March 18, 2015, an additional statement was taken from
4 Michael Smith SR to more accurately describe the timeframe regarding Michael SMITH
5 JR.'s residency at 17552 Front Street, La Conner, Washington. The statement, written by
6 Officer Schwahn, Swinomish Police Department, and signed by Michael Smith SR read,
7 "Michael Smith JR. has not lived at 17552 Front St. for over one year."

8 15. According to the Swinomish Police Department, SMITH has eluded
9 officers on three separate occasions since the warrant was issued. They do not have a
10 fixed residence for SMITH but believe that he may be residing at several locations within
11 the boundaries of the Swinomish Indian Reservation.

12 16. There is no evidence that MICHAEL SMITH JR. has an updated
13 registration with any federal, state, or tribal law enforcement agency in the United States.

14 V. CONCLUSION

15 Based on the foregoing information, I respectfully submit that there is probable
16 cause to believe that the defendant has failed to update his sex offender registration, in
17 violation of Title 18, United States Code, Section 2250.

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20 Brian Allan, Complainant
21 Senior Inspector
22 United States Marshals Service
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1 Based on the Complaint and Affidavit sworn to before me, and subscribed in my
2 presence, the Court hereby finds that there is probable cause to believe MICHAEL
3 SMITH JR. committed the offense set forth in the Complaint.

4 Dated this 20 day of March, 2015.

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8 BRIAN A. TSUCHIDA
9 United States Magistrate Judge
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